

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No.: 1:17-cv-02562

INTRODUCTION

1. In this action, the Center for Biological Diversity (“Center”)—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Environmental Protection Agency (“EPA”) to provide records regarding EPA Administrator Scott Pruitt’s “Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements” (“Settlement Directive”), its failure to conduct an adequate search for responsive records, and its failure to provide the Center with responsive records for which there are no applicable exemptions, in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA” or “Act”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”).

2. On May 24, 2017 media outlets reported that Administrator Pruitt said he had signed a “directive” curtailing so-called “sue and settle” tactics that produce consent decrees including court-enforced deadlines for rulemaking. On June 29, 2017 the Congressional Committee on Energy and Commerce sent a letter to EPA and the Department of Justice (“DOJ”) requesting briefing and written guidelines regarding Mr. Pruitt’s “reported repudiation of the Obama administration’s favored practice of ‘sue and settle’ agreements, which committed

the agency to undertake new rulemakings,” following reports of a recent EPA reform directive. On October 16, 2017, EPA put out a news release announcing that Administrator Pruitt had “issued an Agency-wide directive designed to end ‘sue and settle’ practices within the Agency,” and making publically available this Agency-wide directive and a memorandum.

3. In response to a FOIA request filed by the Center and dated May 25, 2017 (“Settlement Directive FOIA”), on June 28, 2017, EPA provided a final determination to the Center, in which the agency said that it had conducted a search and concluded that the directive was an oral directive and that no responsive records were located. The Center timely appealed this determination on July 5, 2017. EPA acknowledged receipt of the Center’s appeal but, as of the filing of this lawsuit, the agency has not provided a determination on the appeal. The Center filed an additional FOIA request dated July 5, 2017 (“Settlement Directive Second FOIA”), seeking records as a result of a new search for records regarding Pruitt’s directive. EPA acknowledged receipt of this request, but, as of the filing of this lawsuit, the agency has not provided any of the requested records or a final determination letter.

4. EPA’s refusal to release records of Administrator Pruitt’s Settlement Directive is contrary to FOIA and undermines FOIA’s policy of government transparency.

5. EPA is unlawfully withholding responsive records by failing to conduct an adequate search for all records.

6. Prompt access to these records is necessary to effectuate FOIA’s purpose, thus the Center seeks declaratory relief establishing that EPA has violated FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing EPA to provide it with all responsive records and reasonably segregable portions of any lawfully exempt records without further delay.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, or the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

8. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district, because a portion of the responsive records may be found in this district.

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 61,000 members. The Center and its members are harmed by EPA's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the activities, decisions, priorities, and communications related to the EPA administrator's directive.

12. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY is an independent agency of the executive branch of the U.S. government. EPA is in possession and control of the records that the Center seeks, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f). EPA is the federal agency responsible for applying and implementing the federal laws and regulations at issue in this complaint.

STATUTORY BACKGROUND

13. FOIA's basic purpose is for government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

14. FOIA imposes strict and rigorous deadlines on federal agencies when they receive requests for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available, unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

15. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

16. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

17. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

18. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth "unusual circumstances" to justify a deadline extension which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such "unusual

circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

19. FOIA requires agencies to make a determination with respect to an appeal within 20 working days after the receipt of the appeal. *Id.* § 552(a)(6)(A)(ii). If on appeal the agency upholds the denial of the request for records in whole or in part, the agency “shall notify the person making such request of the provisions for judicial review of that determination.” *Id.*

20. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D). The cut-off date for the agency’s search is the date that the agency conducts the search and not any other date.

21. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

22. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

23. FOIA provides that a request for records must be “reasonably described.” *Id.* § 552(a)(3)(A)(i). EPA’s regulations specify that a FOIA request “should reasonably describe the

records you are seeking in a way that will permit EPA employees to identify and locate them,” and that “[w]henver possible, ... should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter.” 40 C.F.R. §2.102(c).

Courts have determined that a FOIA request reasonably describes the requested records so long as the agency’s records custodian can locate the records.

24. The U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

25. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

EPA-HQ-2017-007766 (Settlement Directive FOIA Request)

26. On May 25, 2017 the Center submitted a FOIA request through EPA’s online FOIA portal, FOIAOnline.regulations.gov. The Center requested the Settlement Directive signed by EPA Administrator Pruitt, as reported by media outlets.¹ In addition, the Center requested “all records mentioning, including, and/or referencing” the Settlement Directive signed by Mr. Pruitt. The Center further specified that “all records” refers to, but is not limited to, “any

¹ See generally David LaRoss & Doug Obey, Pruitt Moves to Curtail EPA Use of ‘Sue and Settle’ As GOP Pushes Bills (2017), <https://insideepa.com/daily-news/pruitt-moves-curtail-epa-use-sue-and-settle-gop-pushes-bills>, (last visited November 1, 2017).

and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, telephone records, telephone notes, minutes, memoranda, comments files, presentations, consultations, biological opinions, assessments, evaluations, schedules, telephone logs, papers published and/or unpublished, studies, photographs and other images, data (including raw data, DPS or GIS data, UTM, LiDAR, etc.), maps and/or all other responsive records, in draft or final form.”

27. The same day, May 25, 2017, EPA acknowledged the Center’s request and assigned it tracking number EPA-HQ-2017-007766 (“Settlement Directive FOIA Request”).

28. On May 31, 2017, EPA sent an email and automated FOIAOnline notice granting the Center’s fee waiver request.

29. On June 26, 2017, the Center sent a letter to EPA, notifying the agency that it had violated FOIA’s statutory determination deadline, requesting an estimated date of completion of action on the FOIA request, and offering to assist the agency in its response.

30. On June 28, 2017, EPA provided a final determination to the Center, in which the agency said that it “conducted a search and concluded this was an oral directive; no responsive records were located.”

31. On June 29, 2017, the Congressional Committee on Energy and Commerce sent a letter to EPA and DOJ requesting briefing and written guidelines regarding Mr. Pruitt’s “reported repudiation of the Obama administration’s favored practice of ‘sue and settle’ agreements, which committed the agency to undertake new rulemakings,” following reports of the EPA’s Settlement Directive.

EPA-HQ-2017-009090 (“Settlement Directive Appeal”)

32. On July 5, the Center appealed EPA’s determination that it had “no records” that were responsive to its Settlement Directive FOIA Request, its failure to conduct an adequate search for responsive records, and failure to provide the Center with responsive records for which there are no applicable FOIA exemptions. The Center explained that it sought two categories of records in its FOIA request, the first being Mr. Pruitt’s Settlement Directive, and the second category being all records that mention, include, or reference the Settlement Directive that Mr. Pruitt had authorized. As the Center explained, it was highly unlikely that there were no records that mention or reference Mr. Pruitt’s directive, especially in light of the Congressional investigation into this directive.

33. EPA acknowledged the Center’s appeal on July 5, 2017, and assigned the appeal EPA tracking number EPA-HQ-2017-009090 (“Settlement Directive Appeal”). On July 6, 2017, EPA sent a short letter confirming receipt of the Center’s Settlement Directive Appeal.

34. A determination the Center’s Settlement Directive Appeal was due on August 2, 2017

35. As of the initiation of this lawsuit on November 29, 2017, over four months since EPA acknowledged the Center’s Settlement Directive Appeal, the Center has received no determination on its appeal, no records or additional communications from EPA, or an estimate of the date of the agency’s determination of the Center’s Settlement Directive Appeal.

EPA-HQ-2017-009095 (Second Settlement Directive FOIA Request)

36. On July 5, 2017, the Center submitted a FOIA request through EPA’s online FOIA portal, FOIAOnline.regulations.gov, as a follow-up to the previous Settlement Directive FOIA Request, with the search cut-off dates for the new request to be from May 25, 2017 to the

date of the agency's search for responsive records. The Center requested the Settlement Directive signed by Administrator Pruitt, as reported by media outlets. In addition, the Center requested "all records mentioning, including, and/or referencing the Settlement Directive signed by Mr. Pruitt.

37. EPA acknowledged the request the same day it was sent, July 5, 2017, and assigned it tracking number EPA-HQ-2017-009095 ("Second Settlement Directive FOIA Request").

38. On July 13, 2017, EPA sent an email and automated FOIAOnline notice granting the Center's fee waiver request.

39. On October 16, 2017, EPA published a press release announcing that Administrator Pruitt had "issued an Agency-wide directive designed to end 'sue and settle' practices within the Agency," and made public the agency-wide directive and memorandum.

40. A determination on this request was due on August 2, 2017.

41. As of the initiation of this lawsuit on November 29, 2017, over four months since the request was submitted and acknowledged, the Center had received no records or additional communications from EPA, or an estimated date of completion of the agency's determination on the Center's Second Settlement Directive FOIA Request.

42. In connection with the Center's Second Settlement Directive FOIA Request, EPA did not (1) request additional information from the Center, or (2) notify the Center of any "unusual circumstances" that prevent it from complying with FOIA's deadline for a determination. 5 U.S.C. § 552(a)(6)(A)-(B).

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

EPA Missed FOIA's Mandatory Determination Deadline for the Center's Second Settlement Directive FOIA Request, Number EPA-HQ-2017-009095

43. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

44. The Center has a statutory right to a lawful final determination from EPA on its Second Settlement Directive FOIA Request, number EPA-HQ-2017-009095, in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

45. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

46. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

47. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

EPA Missed FOIA's Mandatory Determination Deadline for the Center's Appeal of the Settlement Directive FOIA Request, Number EPA-HQ-2017-009090

48. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

49. The Center has a statutory right to a lawful determination on its appeal of EPA's final determination on its Sue and Settle Directive FOIA Request, number EPA-HQ-2017-009090, in a manner that complies with FOIA. EPA has violated the Center's rights in this

regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(ii).

50. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

51. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

52. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

EPA Failed to Conduct Adequate Searches for Records that are Responsive to the Center's Settlement Directive FOIA Requests

53. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

54. The Center has a statutory right to have EPA process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's Settlement Directive FOIA Request (EPA-HQ-2017-007766) and Second Settlement Directive FOIA Request (EPA-HQ-2017-009095).

55. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

56. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA request.

57. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

EPA Failed to Disclose All Records that are Responsive to the Center's FOIA Requests

58. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

59. The Center has a statutory right to the records it seeks, and there is no legal basis for EPA to assert any of FOIA's nine exemptions to mandatory disclosure apply to withhold records from the Center. *See* 5 U.S.C. § 552(b)(1-9). EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's Settlement Directive FOIA request (EPA-HQ-2017-007766) and Second Settlement Directive FOIA Request (EPA-HQ-2017-009095).

60. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

61. The Center's organizational activities will be adversely affected if EPA continues to violate FOIA's disclosure provisions as they have in this case.

62. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

EPA Failed to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records that are Responsive to the Center's FOIA Requests

63. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

64. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

65. EPA violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the Center's Settlement Directive FOIA request (EPA-HQ-2017-007766) and Second Settlement Directive FOIA Request (EPA-HQ-2017-009095).

66. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to EPA in the foreseeable future.

67. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions as it has in this case.

68. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fifth Claims)

EPA Unlawfully Withheld or Unreasonably Delayed Actions That FOIA Requires

69. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

70. EPA unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to (1) make a timely and lawful determination on the Center's Settlement Directive Appeal, number EPA-HQ-2017-009090; (2) make a timely and lawful determination on the Center's Second Settlement Directive FOIA Request, number EPA-HQ-2017-009095; (3) conduct a search that is reasonably calculated to locate all responsive records to the Center's Settlement Directive FOIA Request (EPA-HQ-2017-007766) and Second

Settlement Directive FOIA Request (EPA-HQ-2017-009095); (4) provide the Center with records that are responsive to its FOIA requests, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to both of these FOIA requests, in the event that records may be subject to an exemption. EPA's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

71. Alternatively, EPA unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) make a timely and lawful determination on the Center's Settlement Directive Appeal, number EPA-HQ-2017-009090; (2) make a timely and lawful determination on the Center's Second Settlement Directive FOIA Request, number EPA-HQ-2017-009095; (3) conduct a search that is reasonably calculated to locate all responsive records to the Center's Settlement Directive FOIA Request (EPA-HQ-2017-007766) and Second Settlement Directive FOIA Request (EPA-HQ-2017-009095); (4) provide the Center with records that are responsive to its FOIA requests, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to both of these FOIA requests, in the event that records may be subject to an exemption. EPA's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

72. As alleged above, EPA's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

73. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

74. The Center has no other adequate remedy at law to redress the violations noted above.

75. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SEVENTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Sixth Claims)

EPA's Violations of FOIA's Requirements Are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

76. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

77. EPA violated FOIA's statutory mandates due to its failure and refusal to (1) make a timely and lawful determination on the Center's Settlement Directive Appeal, number EPA-HQ-2017-009090; (2) make a timely and lawful determination on the Center's Second Settlement Directive FOIA Request, number EPA-HQ-2017-009095; (3) conduct a search that is reasonably calculated to locate all responsive records to the Center's Settlement Directive FOIA Request (EPA-HQ-2017-007766) and Second Settlement Directive FOIA Request (EPA-HQ-2017-009095); (4) provide the Center with records that are responsive to its FOIA requests, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (5) provide the Center with all reasonably segregable portions of responsive records to both of these FOIA requests, in the event that records may be subject to an exemption. By repeatedly violating FOIA's statutory mandates, EPA's actions are arbitrary, capricious, an abuse of

discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

78. As alleged above, EPA's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

79. The Center has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. As alleged above, EPA violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

80. The Center has no other adequate remedy at law to redress the violations noted above.

81. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA requests, numbers EPA-HQ-2017-007766 and EPA-HQ-2017-009095, with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

2. Declare that Defendant's failure to timely make a determination on Plaintiff's FOIA requests and appeal is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

3. Declare that Defendant's failures to conduct searches that are reasonably calculated to locate all responsive records and to disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

4. Declare that Defendant's failure to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, is unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

5. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

6. Grant such other and further relief as the Court may deem just and proper.

DATED: November 29, 2017

Respectfully submitted,

/s/ Jennifer L. Loda

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mtownsend@biologicaldiversity.org

Attorneys for Plaintiff

*Seeking admission *pro hac vice*

CIVIL COVER SHEET

JS-44 (Rev. 7/13 DC)

I. (a) PLAINTIFFS CENTER FOR BIOLOGICAL DIVERSITY (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Pima County</u> (EXCEPT IN U.S. PLAINTIFF CASES)		DEFENDANTS U.S. Environmental Protection Agency COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>Washington Ch</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>	
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Margaret Townsend, Center for Biological Diversity P.O. Box 11374 Portland OR 97211-0374 (971) 717-6409		ATTORNEYS (IF KNOWN)	

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 2 U.S. Government Defendant <input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width:100%;"> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT
 (Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input checked="" type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input checked="" type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input checked="" type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input checked="" type="radio"/> E. General Civil (Other)	OR	<input checked="" type="radio"/> F. Pro Se General Civil
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<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization	<input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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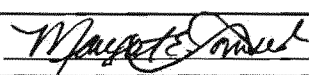
<input checked="" type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Freedom of Information Act, 5 U.S.C. § 552. Failure to comply with FOIA's statutory mandates.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 11/29/2017	SIGNATURE OF ATTORNEY OF RECORD: 
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC. 88888 if plaintiff is resident of United States but not Washington, DC. and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT. The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant

)
)
)
)
)
)
)

Civil Action No. 17-cv-02562

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

ED 001793A 00031997-00022

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant

)
)
)
)
)
)
)

Civil Action No. 17-cv-02562

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

12, \$ 6XPPRQV^L 8^L 9^L 1^L 2^L 3DJH^L 4^L 5^L

&LYLO^L \$FWLRQ^L 17-cv-02562

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

7KL^L VXPPRQV^L IRU^L *(name of individual and title, if any)*

ZDV^L UHFHLYHG^L E\ ^L *(date)* RQ

u ,^L SHUVRQDOO\ ^L VHUYHG^L WKH^L VXPPRQV^L RQ^L WKH^L LQGLYLGXDO^L DW

RQ^L *(date)*

^L RU

u ,^L CHIW^L WKH^L VXPPRQV^L DW^L WKH^L LQGLYLGXDO^L 8^L UHVLQFH^L FIDRU^L ~~VXDO~~^L SODFH

8^L D^L SHUVRQ^L RI^L VXWDQGH^L DJH^L DQG^L GLVFXUWLQJ^L ZKR^L UHVLGH

RQ^L *(date)* 8^L DQG^L PDLOHG^L D^L FRS\ ^L WR^L WKH^L LQGLYLGXDO^L 8^L ODW^L NQRZQ^L DGGUHV

u ,^L VHUYHG^L WKH^L VXPPRQV^L RQ^L *(name of individual)*

8^L ZKR^L LV

^L GHMLJQDWHG^L E\ ^L ODZ^L WR^L DFFHSW^L VHUYLFH^L RI^L SURSHV^L RQ^L ELKDOI^L RI^L

RQ^L *(date)*

^L RU

u ,^L UHWAUHG^L WKH^L VXPPRQV^L XQH[HFXWHG^L EHFDXVH

u 2WKHU^L *(specify):*

0\ ^L IHHV^L DUH^L •

IRU^L WUDYHO^L DQG^L •

IRU^L VHUYLFHV^L 0.00RU^L D^L WRWDO^L 1

,^L GHFODUH^L XQGHU^L SHQDOM^L RI^L SHUMXU\ ^L WKDW^L WKH^L LQIRUPDWLRQ^L LV^L WUX

'DWH

Server's signature

Printed name and title

Server's address

\$GGLWLRQDO^L LQIRUPDWLRQ^L UHJDUGLQJ^L DWWHPSWHG^L VHUYLFH^L 8^L HWF

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant

)
)
)
)
)
)
)

Civil Action No. 17-cv-02562

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Attorney
c/o Civil Process Clerk
555 4th Street N.W.
Washington, D.C. 20001-2733

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

2, S¹ 6XPPRQV^L 8¹ 9¹ 1¹ 9¹ 9¹ 3DJH^L 1¹ 0

&LYLO^L \$FWLRQ^L 17-cv-02562

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

7KLV^L VXPPRQV^L IRU^L *(name of individual and title, if any)*

ZDV^L UHFHLYHG^L E\ ^L *(date)* RQ

u ,^L SHUVRQDOO\ ^L VHUYHG^L WKH^L VXPPRQV^L RQ^L WKH^L LQGLYLGXDO^L DW

RQ^L *(date)*

^L RU

u ,^L CHIW^L WKH^L VXPPRQV^L DW^L WKH^L LQGLYLGXDO^L 8 V^L UHVLGHQFH^L ~~WZDQ~~ SODFH

8^L D^L SHUVRQ^L RI^L VXLWDEOH^L DJH^L DQG^L GLVFUHWLRQ^L ZKR^L UHVLGH

RQ^L *(date)* 8^L DQG^L PDLOHG^L D^L FRS\ ^L WR^L WKH^L LQGLYLGXDO^L 8 V^L ODWW^L NQRZQ^L DGGUHV

u ,^L VHUYHG^L WKH^L VXPPRQV^L RQ^L *(name of individual)*

8^L ZKR^L LV

^L GHMLJQDWHG^L E\ ^L ODZ^L WR^L DFFHSW^L VHUYLFH^L RI^L SURHW^L RQ^L ELKDOI^L RI^L

RQ^L *(date)*

^L RU

u ,^L UHWAUHG^L WKH^L VXPPRQV^L XQH[HFWXHG^L EHFDXVH

u 2WKHU^L *(specify):*

0\ ^L IHHV^L DUH^L •

IRU^L WUDYHO^L DQG^L •

IRU^L VHUYLFHV^L 0.00RU^L D^L WRWDO^L 1

,^L GHFODUH^L XQGHU^L SHQDOM^L RI^L SHUMXU\ ^L WKDW^L WKH^L LQIRUPDWLRQ^L LV^L WUX

'DWH

Server's signature

Printed name and title

Server's address

\$GGLWLRQDO^L LQIRUPDWLRQ^L UHJDUGLQJ^L DWWHPSWHG^L VHUYLFH^L 8^L HWF